

OFFICE COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1959~~ 1960

No. ~~689~~ 34

TIMES FILM CORPORATION, PETITIONER,

vs.

CITY OF CHICAGO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 10, 1960
CERTIORARI GRANTED MARCH 21, 1960

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

No. 12717

**TIMES FILM CORPORATION, a New York corporation,
Plaintiff-Appellant,**

vs.

**THE CITY OF CHICAGO, a municipal corporation, RICHARD
J. DALEY, and TIMOTHY J. O'CONNOR, Defendants-
Appellees.**

**Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.**

Honorable William J. Campbell, Trial Judge.

Appendix for Plaintiff-Appellant—Filed August 17, 1959

[File endorsement omitted]

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APPENDIX.

1. **IN THE UNITED STATES DISTRICT COURT,
Northern District of Illinois,
Eastern Division.**

**Times Film Corporation, a New
York corporation,**

Plaintiff,

vs.

**The City of Chicago, a municipal
corporation, Richard J. Daley,
and Timothy J. O'Connor,**

Defendants.

Civil Action

No. 58 C 968

Honorable

William J. Campbell

**PREFIX TO RECORD PURSUANT TO RULE 12(c)
OF THE UNITED STATES COURT OF APPEALS,
SEVENTH CIRCUIT.**

1. This suit was commenced on May 29, 1958.
2. The names of the parties to this suit are Times Film Corporation, a New York corporation, plaintiff, and City of Chicago, a municipal corporation, Richard J. Daley and Timothy J. O'Connor, defendants.
3. The pleadings were filed as follows:
 - (a) May 29, 1958: Complaint and Summons.
 - (b) June 23, 1958: Answer of defendants.
 - (c) November 12, 1958: Plaintiff's Motion for Summary Judgment with Affidavit attached thereto.
 - (d) November 21, 1958: Defendants' Motion for Summary Judgment with Affidavit and Memorandum in opposition to Plaintiff's Motion for Summary Judgment attached thereto.

Prefix to Record.

(e) November 28, 1958: Plaintiff's brief in support of Motion for Summary Judgment and in opposition to Defendants' Motion for Summary Judgment.

(f) December 4, 1958: Defendants' brief in support of Motion for Summary Judgment and in opposition to Plaintiff's Motion for Summary Judgment.

(g) December 11, 1958: Plaintiff's reply brief in support of Motion for Summary Judgment and in opposition to Defendants' Motion for Summary Judgment.

(h) March 6, 1958: Stipulation of Facts.

4. Defendants were not arrested nor was bail taken or property attached.

5. On February 18, 1959, a pre-trial conference was held whereby the respective parties agreed that the cause would be tried on a stipulation of facts.

6. On trial of this cause on the submitted stipulation of facts the Court found against the plaintiff and in favor of defendants.

7. On May 29, 1959, a final order was entered by the Court dismissing this cause and entering judgment in favor of defendants at plaintiff's costs.

8. On June 26, 1959, an appeal was taken by filing a Notice of Appeal and Cost Bond on Appeal by plaintiff.

Times Film Corporation, a New
York corporation,

Plaintiff,

By Abner J. Mikva,

231 S. LaSalle, Chicago 4,

An 3-3700,

Attorney for Plaintiff.

3 Pleas had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of May, being the 4th day thereof, in the Year of Our Lord One Thousand Nine Hundred Fifty-Nine and of the Independence of the United States of America, the 183rd Year.

Present:

Honorable Gunnar H. Nordbye, District Judge.

Honorable William J. Campbell, Chief District Judge.

Honorable Philip L. Sullivan, District Judge.

Honorable Michael L. Igoe, District Judge.

Honorable Walter J. LaBuy, District Judge.

Honorable J. Sam Perry, District Judge.

Honorable Julius J. Hoffman, District Judge.

Honorable Julius H. Miner, District Judge.

Honorable Edwin A. Robson, District Judge.

Roy H. Johnson, Clerk.

William W. Kipp, Sr., Marshal.

Friday, May 29, 1959.

Court Met Pursuant to Adjournment.

Present: Honorable William J. Campbell, Trial Judge.

UNITED STATES DISTRICT COURT.
(Caption—58-C-968)

COMPLAINT.

Now comes Times Film Corporation, plaintiff herein, by its attorneys, Felix J. Bilgrey and Abner J. Mikva, and complain of the defendants, and allege:

Count I.

1. The ground upon which the jurisdiction of the court depends is diversity of citizenship between the parties hereto. The amount in controversy herein exceeds Three Thousand Dollars (\$3,000.00) exclusive of interest and costs. Plaintiff is a corporation incorporated under the laws of the State of New York with its principal office and place of business in the City of New York, State of New York, and is a citizen of the State of New York. Defendant City of Chicago, is a municipal corporation duly organized and existing under the laws of the State of Illinois and is a citizen of the State of Illinois. Defendant 5 Richard J. Daley is the duly elected and acting mayor of the City of Chicago and is a citizen of the State of Illinois. Defendant Timothy J. O'Connor is the duly appointed and acting commissioner of police of the City of Chicago and is a citizen of the State of Illinois. This action arises under the first and fourteenth Amendments to the Constitution of the United States as hereinafter more fully appears.

2. Plaintiff has the exclusive right to distribute, to license for public exhibition and to exhibit in the City of Chicago the motion picture film entitled "Don Juan".

3. Pursuant to the provisions of a certain municipal ordinance enacted by the City of Chicago, being Sections

155-1 to 155-7 of the Municipal Code of the City of Chicago, a copy of which ordinance is attached hereto, marked "Exhibit A" and made a part hereof, plaintiff applied to defendant O'Connor for a permit to exhibit the motion picture film "Don Juan". Defendant O'Connor on December 17, 1957, notified plaintiff that he would not issue such a permit on the ground that such a permit shall be granted only after the film for which said permit has been requested has been produced at the Office of the Commissioner of Police, for examination. Pursuant to the municipal ordinance referred to above, plaintiff hereupon appealed said decision of defendant O'Connor to the defendant Daley on December 23d, 1957. On December 27th, 1957, defendant Daley denied the appeal and refused to issue a permit for the exhibition of "Don Juan" in the City of Chicago.

6 4. As a result of the foregoing actions of the defendants in denying plaintiff a permit to exhibit said film and as a result of the requirements of the municipal ordinance above referred to that a permit must be obtained prior to the exhibition of any motion picture film in the City of Chicago, plaintiff is forbidden and prohibited from exhibiting said motion picture film under penalty of arrest and criminal prosecution and the plaintiff has been directly damaged by not being permitted to exhibit said motion picture film.

5. Defendants' actions in denying plaintiff the requested permit are an infringement and denial to plaintiff and its constitutional rights to freedom of speech and of the press and to engage in lawful business activities in the City of Chicago.

6. Defendants' action in demanding submission of the motion picture film "Don Juan" for censorship prior to the issuance of a permit constitutes a prior restraint in violation of the 1st and 14th Amendments to the Constitution of the United States.

Complaint.

Count II.

Plaintiff for a second cause of action avers:

1. Plaintiff repeats and realleges Paragraphs 1, 2, 3, and 4 of Count I of this Complaint as if they were set forth in full therein.

2. Said municipal ordinance violates on its face the 1st and 14th Amendments to the Constitution of the United States and unlawfully abridges the rights protected therein.

7 Wherefore, plaintiff prays:

(a) That the court issue an order directed to defendants City of Chicago, Richard J. Daley, Mayor of said City of Chicago, and Timothy J. O'Connor, Police Commissioner of said City of Chicago, commanding the defendants to forthwith issue to plaintiff the permit required by the aforesaid municipal ordinance.

(b) That the court issue an order restraining defendants City of Chicago, Richard J. Daley, as Mayor of said City of Chicago, and Timothy J. O'Connor, as Police Commissioner of said City of Chicago, individually and as acting officers of the City of Chicago, and all police officers, agents, servants and employees acting for and on behalf of the City of Chicago from preventing, hindering or otherwise interfering with the plaintiff, its officers or agents in the exhibition of the film "Don Juan" in the City of Chicago, Illinois.

(c) That the court provides such other and further relief as justice shall require.

Times Film Corporation, a
New York corporation.

By Felix J. Bilgrey,
As Attorney,
and

By Abner J. Mikva,
As Attorney,

By Jean Goldwurm,
As its President.

Complaint.

7

8 State of New York, }
County of New York. } ss.

Jean Goldwurm, being first duly sworn on oath, deposes and says that he is the President of Times Film Corporation, the plaintiff in the above action, and that he has read the above and foregoing complaint by him subscribed, that he knows the contents thereof and that the same is true in substance and fact.

Jean Goldwurm.

Subscribed and Sworn to before me this 26th day of May, 1958.

(Seal)

Andrew J. Sitzman,
Notary Public, State of N. Y.
#41-9030850.
Qualified in Queens County,
Certificate filed with New York
County Clerk.

Term Expires March 30, 1960.

State of New York, }
County of New York. } ss.

I, James McGurrin, County Clerk and Clerk of the Supreme Court, New York County, a Court of Record having by law a seal, Do Hereby Certify that Andrew J. Sitzman whose name is subscribed to the annexed affidavit, deposition, certificate of acknowledgment or proof, was at the time of taking the same a Notary Public in and for the State of New York, duly commissioned and sworn and qualified to act as such throughout the State of New York; that pursuant to law a commission, or a certificate of his official character, and his autograph signature, have been filed in my office; that as such Notary Public he was duly authorized by the laws of the State of New York to administer oaths and affirmations, to receive and certify the acknowledgment or proof of deeds, mortgages, powers of attorney and other written instruments for lands, tenements and hereditaments to be read in evidence or recorded in this State, to protest notes and to take and certify affidavits and depositions; and that I am well acquainted with the handwriting of such Notary Public, or have compared the signature on the annexed instrument with his autograph signature deposited in my office, and believe that the signature is genuine.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 26 day of May, 1958.

(Seal) James McGurrin,
County Clerk and Clerk of the Supreme
Court, New York County.

Fee Paid 50¢.

Exhibit A.

155-1. It shall be unlawful for any person to show or exhibit in a public place, or in a place where the public is admitted, anywhere in the city any picture or series of pictures of the classes or kinds commonly shown in mutoscopes, kinetoscopes, or cinematographs, and such pictures or series of pictures as are commonly shown or exhibited in so-called penny arcades, and in all other automatic or motion picture devices, whether an admission fee is charged or not, without first having secured a permit therefor from the commissioner of police.

It shall be unlawful for any person to lease or transfer, or otherwise put into circulation, any motion picture plates, films, rolls, or other like articles or apparatus, from which a series of pictures for public exhibition can be produced, to any exhibitor of motion pictures, for the purpose of exhibition within the city, without first having secured a permit therefor from the commissioner of police.

The permit herein required shall be obtained for each and every picture or series of pictures exhibited and is in addition to any license or other imposition required by law or other provision of this code.

Any person exhibiting any picture or series of pictures without a permit having been obtained therefor shall be fined not less than fifty dollars nor more than one hundred dollars for each offense. A separate and distinct offense shall be regarded as having been committed for each day's exhibition of each picture or series of pictures without a permit. [Amend. Coun. J. 12-21-39, p. 1396.]

155-2. Before any such permit is granted, an application in writing shall be made therefor, and the plates, films, rolls, or other like apparatus by or from which such picture or series of pictures are shown or produced, or the

picture or series of pictures itself as shown or exhibited, shall be shown to the commissioner of police, who shall inspect such plates, films, rolls, or apparatus, or such picture or series of pictures, or cause them to be inspected, and within three days after such inspection he shall either grant or deny the permit. In case a permit is granted, it shall be in writing and in such form as the commissioner of police may prescribe.

155-3. The fee for the original permit in each case shall be three dollars for each one thousand lineal feet of film or fraction thereof, and for each duplicate or print thereof an additional fee of one dollar for each one thousand lineal feet of film or fraction thereof, which fee shall be paid to the city collector before any permit is issued.

155-4. Such permit shall be granted only after the motion picture film for which said permit is requested has been produced at the office of the commissioner of police for examination or censorship.

If a picture or series of pictures, for the showing or exhibition of which an application for a permit is made, is immoral or obscene, or portrays depravity, criminality, or lack of virtue of a class of citizens of any race, color, creed, or religion and exposes them to contempt, derision, or obloquy, or tends to produce a breach of the peace or riots, or purports to represent any hanging, lynching, or burning of a human being, it shall be the duty of the commissioner of police to refuse such permit; otherwise it shall be his duty to grant such permit.

In case the commissioner of police shall refuse to grant a permit as hereinbefore provided, the applicant for the same may appeal to the mayor. Such appeal shall be presented in the same manner as the original application to the commissioner of police. The action of the mayor on any application for a permit shall be final.

155-5. In all cases where a permit for the exhibition of a picture or series of pictures has been refused under the provisions of the preceding section because the same tends towards creating a harmful impression on the minds of children, where such tendency as to the minds of adults would not exist if exhibited only to persons of mature age, the commissioner of police may grant a special permit limiting the exhibition of such picture or series of pictures to persons over the age of twenty-one years; provided, such picture or pictures are not of such character as to tend to create contempt or hatred for any class of law abiding citizens.

When such special permit has been issued, it shall be unlawful for any person exhibiting said picture to allow any persons under the age of twenty-one years to enter the place where same is being exhibited or to remain in said place while any part of said picture or series of pictures is being shown.

Any person violating any of the provisions of this section shall be fined not less than ten dollars nor more than twenty-five dollars for each offense, and the admission of each person under twenty-one years of age, or permission to remain of such person under twenty-one years of age, shall constitute a distinct and separate offense.

155-6. The written permit provided for in this chapter shall be posted at or near the entrance of the theater, hall, room, or place where any permitted picture or series of pictures is being exhibited, at such a place and in such a position that it may easily be read by any person entering such theater, hall, room, or place at any time when any such permitted picture or series of pictures is being exhibited whether in the day time or in the night time.

155-7. When a permit to show a picture or series of pictures is once granted to an exhibitor, the picture or series of pictures may be shown by any other exhibitor;

provided, that the written permit is actually delivered to such other exhibitor and that a written notice of the transfer or lease to such other exhibitor is first duly mailed by the transferee or lessee to the commissioner of police. ~~Any number of transfers or leases of the same picture or series of pictures may be made, provided always that the permit is actually delivered to the transferee or lessee and that such written notice be first mailed to the commissioner of police.~~

Said written notice shall contain the name and a brief description of the picture or series of pictures, the number of the permit, and the location of the building or place where the transferee or lessee proposes to exhibit such picture or series of pictures. The exhibition by any transferee or lessee of any permitted picture or series of pictures without first mailing such notice shall be considered a violation of this chapter, and a separate offense shall be regarded as having been committed for each day's exhibition by a transferee or lessee of each picture or series of pictures without the mailing of such notice.

In case a permit shall be refused for any such motion picture plates, films, rolls, or other like articles or apparatus from which a series of pictures for public exhibition can be produced, it shall be unlawful for any person to lease or transfer the same to any exhibitor of motion pictures or otherwise put the same into circulation for purposes of exhibition within the city.

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UNITED STATES DISTRICT COURT.

• • (Caption—58-C-968) • •

SUMMONS.

To the above named Defendants:

You are hereby summoned and required to serve upon Felix J. Bilgrey and Abner J. Mikva, plaintiff's attorneys, whose address is 231 South La Salle Street, Chicago 2, Illinois, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Roy H. Johnson,

(Seal of Court)

Clerk of Court,

Marie Knudsen;

Deputy Clerk.

Date: May 29, 1958.

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Return on Service of Writ.

I hereby certify and return, that on the day of, 19 .., I received this summons and served it together with the complaint herein as follows: Served this writ together with copy of complaint, on the within named City of Chicago, a Municipal Corporation, by leaving copies thereof for at usual place of business, 121 No. La Salle St., Chicago, Illinois, with M. Brown, Legal Department, this 2nd day of June, A. D. 1958 at the same time informing her of the contents thereof.

Served this writ together with copy of complaint, on the within named Richard J. Daley, Mayor of the City of

Summons.

Chicago, by leaving copies thereof for him at his usual place of business, 121 No. La Salle St., Chicago, Illinois, with M. Brown, Legal Department, this 2nd day of June, A. D. 1958 at the same time informing her of the contents thereof.

Served this writ together with copy of complaint, on the within named Timothy J. O'Connor, Commissioner of Police, by leaving copies thereof for him at his usual place of business, 121 North La Salle St., Chicago, Illinois, with M. Brown, Legal Department, this 2nd day of June, A. D. 1958, at the same time informing her of the contents thereof.

W. W. Kipp, Sr.,

United States Marshal,

By Wm. Raff,

Deputy United States Marshal.

Marshal's Fees		
Travel	2	\$0.20
Service	3	6.00
		<hr/>
		\$6.20

(Stamp) Department of Law, City of Chicago, Date
Rec'd 6/2/58 Time 3:05 P.M. John C. Melaniphy, Corpo-
ration Counsel, by M. Brown, Records Section.

13. IN THE UNITED STATES DISTRICT COURT.
(Caption—58-C-968)

DEFENDANTS' ANSWER TO COMPLAINT.

Now comes the defendants, City of Chicago, Richard J. Daley and Timothy J. O'Connor and for answer to the Plaintiff's Complaint, say that:

1. As to paragraph 1 of Count I of the Plaintiff's Complaint, these defendants admit the allegations thereof.

2. As to paragraph 2 of Count I of the Plaintiff's Complaint, these defendants have no knowledge or information sufficient to form a belief as to the allegations of said paragraph 2 and, they therefore deny the allegations thereof.

3. Further answering paragraph 3 of Count I of the Plaintiff's Complaint, these defendants admit the allegations thereof.

4. As to paragraph 4 of Count I of the Plaintiff's Complaint, these defendants admit the allegations thereof.

14 5. As to paragraph 5 of Count I of the Plaintiff's Complaint, these defendants deny that the constitutional rights of the plaintiff to freedom of speech and of the press and to engage in lawful business activities in the City of Chicago has been denied unlawfully by the defendants herein.

6. As to paragraph 6 of Count I of the Plaintiff's Complaint, these defendants deny that their action in demanding submission of the motion picture film "Don Juan" for censorship prior to the issuance of a permit constitutes a prior restraint in violation of the 1st and 14th Amendments to the Constitution of the United States.

1. As to Count II of the Plaintiff's Complaint, these defendants repeat and reallege their answers to para-

graphs 1 to 4 inclusive of Count I of the Plaintiff's Complaint as their answers to said paragraphs adopted by the plaintiff in paragraph 1 of Count II of the Plaintiff's Complaint.

2. As to paragraph 2 of Count II of the Plaintiff's Complaint, these defendants deny that the municipal ordinance therein referred to violates on its face the 1st and 14th Amendments to the Constitution of the United States and unlawfully abridges the rights protected thereby.

Further answering the Plaintiff's Complaint, these defendants deny that the plaintiff is entitled to an order demanding the defendants to forthwith issue to the plaintiff the permit required by the ordinance of the City of Chicago therein referred to in paragraph (a).

These defendants further deny that the plaintiff is entitled to a restraining order prayed in paragraph (b) 15 of the Plaintiff's Complaint.

These defendants further answering the plaintiff's prayer for relief contained in paragraph (c) of its Complaint, deny that they are entitled to any relief under the allegations of the said Complaint.

City of Chicago, a municipal corporation,
Richard J. Daley and Timothy
J. O'Connor,

Defendants.

John C. Melaniphy,

*Corporation Counsel of the City of
Chicago,*

By Edward R. Hartigan,

Assistant Corporation Counsel,

James P. Daley,

Assistant Corporation Counsel,

Attorneys for Defendants.

Certificate.

I hereby certify that I served a copy of the within Answer upon the plaintiff herein by placing a copy thereof in an envelope addressed to Mr. Abner J. Mikva, 231 S. LaSalle Street, Chicago 4, Illinois, placing the proper United States Government postage thereon and depositing the same in the United States Government mailbox located in the City Hall, Chicago, Illinois, this day of June, 1958.

Edward R. Hartigan,
Assistant Corporation Counsel.

IN THE UNITED STATES DISTRICT COURT.

• • (Caption—58-C-968) • •

MOTION.

Now comes Times Film Corporation, plaintiff, by its attorneys, Abner J. Mikva and Felix J. Bilgrey, and moves the Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, to enter judgment for plaintiff on Counts I and II of its Complaint and to provide the injunctive and declaratory relief therein requested and to issue an order directed to defendants commanding them to issue forthwith to plaintiff the requested permit, on the ground that there is no genuine issue as to any material fact in these Counts and that plaintiff is entitled to a judgment as a matter of law; as appears from the pleadings and Exhibits on file in this action and the affidavit of Abner J. Mikva attached hereto and made a part hereof.

Times Film Corporation,

Plaintiff,

By Abner J. Mikva and

Felix J. Bilgrey,

Its Attorneys,

Abner J. Mikva,

231 South LaSalle St.,

Chicago 4, Illinois,

Andover 3-3700.

18 State of Illinois, }
County of Cook. } ss.

Affidavit.

Abner J. Mikva, being first duly sworn, on oath deposes and says:

1. He is the attorney for plaintiff in the above entitled action.

2. This is an action against City of Chicago, and its Mayor Richard J. Daley and its Police Commissioner Timothy J. O'Connor, seeking injunctive and declaratory relief, requesting the Court to direct defendants to issue a permit for exhibition of a motion picture. The motion for summary judgment which this affidavit supports requests that this Court enter judgment on all the Counts of the Complaint. Deponent refers to the Complaint herein for a more particular statement of the cause of action.

3. The answer of defendants admits the following facts:

(a) That this Court has jurisdiction on the grounds of both the diversity of citizenship between the parties and since the action arises under the First and Fourteenth Amendments to the Constitution of the United States. The amount in controversy herein exceeds Three Thousand Dollars (\$3,000.00) exclusive of interest and costs.

(b) That plaintiff sought to obtain a permit for exhibition of a motion picture entitled "Don Juan" as purportedly required by Sections 155-1 to 155-7 of the Municipal Code of the City of Chicago, and that such permit was refused on the ground that plaintiff refused to submit the aforesaid motion picture for censorship by the office of the Commissioner of Police.

(c) As a result of defendants' action, plaintiff is

Motion for Judgment.

prohibited from exhibiting the motion picture "Don Juan" under penalty of arrest and criminal prosecution. This prohibition has resulted in monetary damage to plaintiff.

4. As to paragraph 2 of the Complaint, deponent states that he has in his possession admissible evidence to show that plaintiff has the exclusive right to distribute, to license for public exhibition and to exhibit in the City of Chicago the motion picture entitled "Don Juan."

5. The question, therefore, presented by Counts I and II are questions of law as to whether defendants' actions in denying plaintiff the requested permit are an infringement of plaintiff's constitutional rights and as to whether the ordinance in question violates the First and Fourteenth Amendments to the Constitution of the United States.

Further deponent sayeth not.

Abner J. Mikva.

Subscribed and Sworn to before me this 11th day of November, 1958.

(Seal)

Engenie Ermoyan,
Notary Public.

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IN THE UNITED STATES DISTRICT COURT.

• • (Caption—58-C-968) • •

NOTICE.

To: John C. Melaniphy, Corporation Counsel, City of
Chicago, Attorney for Defendants,
511 City Hall,
Chicago, Illinois

Please Take Notice that on the 24th day of November, 1958, at the opening of Court on that day or as soon thereafter as counsel may be heard, I shall appear before the Honorable William J. Campbell, Judge of the U. S. District Court, Northern District of Illinois, Eastern Division, or any other judge that may be sitting in his stead, and move for entry of summary judgment herein in favor of Times Film Corporation against City of Chicago, Richard J. Daley and Timothy J. O'Connor, defendants, for the relief prayed for in Counts I and II of the Complaint, together with costs and disbursements, pursuant to Rule 56 of the Federal Rules of Civil Procedure, and in support of said motion I shall present the affidavit of Abner J. Mikva, a copy of which is attached hereto.

At which time and place you may appear if you so see fit.

Abner J. Mikva,

231 S. LaSalle St.,

Chicago 4, Illinois,

Andover 3-3700,

Attorney for Plaintiff.

21 State of Illinois, }
County of Cook. } ss.

Affidavit.

Eugenie Ermoyan, being first duly sworn, on oath deposes and says that she served the foregoing Notice on John C. Melaniphy, Corporation Counsel, City of Chicago, attorney for defendants, by placing a copy of the foregoing Notice, together with copy of Motion and Affidavit referred to therein, in a postage prepaid, properly addressed envelope to said attorney, and placing said envelope in the U. S. mail chute at 231 S. LaSalle St., Chicago, at 5:00 p. m. November 11, 1958.

Eugenie Ermoyan.

Subscribed and Sworn to before me this 11th day of November, 1958.

Esther C. Hallgren,
Notary Public.

(Seal)

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IN THE UNITED STATES DISTRICT COURT.
• • (Caption—58-C-968) • •

MOTION FOR SUMMARY JUDGMENT.

Now come the defendants, City of Chicago, a municipal corporation, Richard J. Dailey, Mayor of the City of Chicago and Timothy J. O'Connor, Commissioner of Police of said City of Chicago, and move the court to enter judgment for the said defendants, pursuant to Rule 56 of the Federal Rules of Civil Procedure, on the ground that there is no genuine issue as to any material fact as appears from the pleadings on file in this case and from the affidavit of Edward R. Hartigan, an Assistant Corporation Counsel for the City of Chicago, to whom said case has been assigned the defense of the defendants.

City of Chicago, a municipal corporation,
Richard J. Daley and Timothy
J. O'Connor,

Defendants.

John C. Melaniphy,
*Corporation Counsel of the City of
Chicago,*

By Edward R. Hartigan,
Assistant Corporation Counsel,
James P. Daley,
Assistant Corporation Counsel,
Attorneys for Defendants.

I hereby certify that I served a copy of the within Motion For Summary Judgment upon the plaintiff herein by placing a copy thereof in an envelope addressed to Messrs. Abner J. Mikva and Filex J. Bilgrey, 231 S. La Salle Street, Chicago 4, Illinois, placing the proper United States Government postage thereon and depositing the same in the United States Government mailbox located in the City Hall, Chicago, Illinois, this 21st day of November, 1958.

Edward R. Hartigan,
Assistant Corporation Counsel.

IN THE UNITED STATES DISTRICT COURT.
• • (Caption—58-C-968) • •

Tuesday, January 6, 1959.

Present: Honorable William J. Campbell, District Judge.

Upon due consideration the Court being fully advised it is

Ordered that defendants' and plaintiff's motions for summary judgment be and the same hereby are denied.

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IN THE UNITED STATES DISTRICT COURT.

• • (Caption—58-C-968) • •

STIPULATION OF FACTS.

It is hereby stipulated by and between Times Film Corporation, a New York corporation, plaintiff, in the above entitled cause, by its attorney, Abner J. Mikva, and City of Chicago, a municipal, Richard J. Daley and Timothy J. O'Connor, defendants in the above entitled cause, by their attorney, John C. Melaniphy, Corporation Counsel of the City of Chicago, that the following fact allegations contained in the Complaint are true.

1. That the U. S. District Court, has jurisdiction on the grounds of both the diversity of citizenship between the parties and because the action arises out of the First and Fourteenth Amendments to the Constitution of the United States. The amount in controversy exceeds the sum of \$10,000.00 exclusive of interest and costs.

2. That pursuant to the provisions of Sections 155-1 to 155-7 of the Municipal Code of Chicago, plaintiff applied to defendant O'Connor for a permit to exhibit the 26 motion picture "Don Juan"; that said defendant notified plaintiff that he would not issue such a permit because such permit could only be granted after the film had been produced at the Office of the Commissioner of Police for examination; that plaintiff refused to so submit such film, but appealed the decision of defendant O'Connor to the defendant Daley; that defendant Daley thereupon denied the appeal.

3. That because of plaintiff's refusal to produce the film at the Office of the Commissioner of Police and the consequent denial of a permit, plaintiff is prohibited from exhibiting the motion picture "Don Juan" under penalty

Stipulations of Facts.

of a fine of not less than \$50.00 nor more than \$100.00 for each day the picture is exhibited without a permit and the plaintiff has been directly damaged by not being permitted to exhibit said motion picture film.

4. Plaintiff has the exclusive right to distribute, to license for public exhibition and to exhibit in the City of Chicago the motion picture film entitled "Don Juan".

5. Plaintiff is still unwilling to submit the motion picture to defendants for censorship as provided in aforesaid ordinance.

6. The above Stipulation contains all the issues of fact raised by the pleadings of the parties. Plaintiff and
27 defendants agree that the case be submitted on the basis of this Stipulation for final decision by the Court.

Times Film Corporation, a New York corporation,

Plaintiff,

By Abner J. Mikva,

231 S. La Salle, Chicago, AN 3-3700,

Its Attorney,

City of Chicago, a municipal corporation,

Richard J. Daley and Timothy J. O'Connor,

Defendants,

By John C. Melaniphy,

*Corporation Counsel of the City
of Chicago,*

By Edward R. Hartigan.

28

IN THE UNITED STATES DISTRICT COURT.

• • • (Caption—58-C-968) • • •

MEMORANDUM AND ORDER.

CAMPBELL, District Judge.

This action arises pursuant to the Complaint filed by Times Film Corporation against the City of Chicago, Mayor Richard J. Daley and Police Commissioner Timothy J. O'Connor, and is submitted on the basis of a stipulation of facts for final decision.

Pursuant to the provisions of Sections 155-1 to 155-7 of the Municipal Code of Chicago, plaintiff applied to defendant, O'Connor for a permit to exhibit the motion picture, "Don Juan". Defendant O'Connor notified plaintiff that he would not issue such a permit because such permit could only be granted after the film had been produced at the office of the Commissioner of Police for examination. Plaintiff refused to so submit such film, but appealed to defendant Daley who denied the appeal. Because of plaintiff's refusal to produce the film at the office of the Commissioner of Police and the consequent denial of a permit, plaintiff is prohibited from exhibiting the motion picture "Don Juan" under penalty of a fine of not less than \$50.00 nor more than \$100.00 for each day the picture is exhibited without a permit.

Plaintiff alleges that said ordinance is void on its face as a prior restraint in violation of the 1st and 14th Amendments to the Constitution of the United States, and prays for injunctive relief in order to exhibit the said film in the City of Chicago.

It is my opinion that I am without jurisdiction to hear this cause on many grounds.

First. Before I can be called upon to pronounce this Statute unconstitutional—the most “important and delicate duty of this Court which is only to be used as a “last resort”—there must exist a “justiciable controversy.” In my opinion, no such controversy exists. *Musk-rat v. U. S.*, 219 U. S. 346; *Skelly Oil Co. v. Phillips*, 339 U. S. 667, 672; *National Mutual Ins. Co. v. Tidewater Transfer Co.*, 337 U. S. 583, 597-598; *U. S. v. Johnson*, 319 U. S. 302; *Willing v. Chicago Auditorium*, 277 U. S. 274; *Liberty Warehouse Co. v. Grannis*, 273 U. S. 70, 74-76; *Steamship Co. v. Emigration Commissioners*, 113 U. S. 33, 39; *Oldland v. Gray*, 179 F. 2d 408; *Coffman v. Federal Laboratories*, 55 F. Supp. 501. Nor has there been presented, a “substantial” federal question. *Gully v. First National Bank*, 299 U. S. 109, 114. Nor has plaintiff suffered a direct or threatened injury. *Hague v. C. I. O.*, 307 U. S. 496, 507, 508; *Frothingham v. Mellon*, 262 U. S. 447.

Second: In essence, the Complaint is concerned with the exhibition of the film, “Don Juan” in the City of Chicago. Had plaintiff submitted said film for examination by the Commissioner of Police as the Ordinance requires, the Commissioner may have approved the film which would have, of necessity, dispelled any need for legal action. The cases are legion which hold that one who has failed to make proper application, is not at liberty to complain because of his anticipation of improper or invalid action. *Bourjois v. Chapman*, 301 U. S. 183, 188; *Dist. of Columbia v. Clawans*, 300 U. S. 608, 616; *Smith v. Cahoon*, 283 U. S. 553, 562; *Lehon v. City of Atlanta*, 242 U. S. 53, 56; *Gundling v. Chicago*, 177 U. S. 183, 186. And see *Kingsley Inter. Pic. Corp. v. City of Providence, R. I.*, 166 F. Supp. 456, 460.

Plaintiff cannot seriously contend that prior restraint of motion pictures is, per se, a violation of the 1st and 14th Amendments. *Joseph Burstyn Inc. v. Wilson*, 343 U. S. 495, 502. Plaintiff has also failed to analyse *Times Film*

Corporation v. City of Chicago, 355 U. S. 35 which presumptively sustains the constitutionality of the Ordinance in question in the light of *American Civil Liberties Union v. City of Chicago*, 3 Ill. 2d 334, 121 NE. 2d 585, though reversing on the "facts". It is therefore impossible to contend that the Ordinance is "void on its face". (I take into consideration *Paramount Film Distributing Corp. v. City of Chicago*, (58 C 437), which recently declared one section of the Ordinance unconstitutional).

Third: Plaintiff has not been restricted from the exhibition of the film "Don Juan" except by the statutory sanction of a fine. That such a fine would be levied against plaintiff if plaintiff exhibited said film is not only hypothetical but also "too remote and abstract an inquiry for the proper exercise of the judicial function". *Longshoremen's Union v. Boyd*, 347 U. S. 222, 224; *United Public Workers v. Mitchell*, 330 U. S. 75, 89-91; *New Jersey v. Sargent*, 269 U. S. 328. This cause falls within the self imposed restraints upon the federal courts so well expressed by Mr. Justice Brandeis in *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 345 *et seq.* Also see *United States v. Auto Workers*, 352 U. S. 567, 590, 591.

30 Fourth: Without specific allegations, plaintiff broadly contends that said Ordinance is void on its face as a prior restraint in violation of the 1st and 14th Amendments to the Constitution of the United States. This type of "scatter-shot" attack upon the constitutionality of a statute has been expressly condemned. *Staub v. City of Barley*, 355 U. S. 313, 332.

Fifth: Here, since plaintiff has not and will not suffer an immediate and irreparable harm, I am without equitable jurisdiction to grant the injunctive relief requested. *Kingsley Inter. Pic. Corp. v. City of Providence, R. I.*, *supra*. *Douglas v. City of Jeanette*, 319 U. S. 157. A federal court of equity should only interfere with the enforcement of

Notice of Appeal.

state laws to prevent irreparable injury which is clear and imminent. *American Federation of Labor v. Watson*, 327 U. S. 582, 593.

Judgment for defendants. Cause dismissed at plaintiff's costs.

Campbell,

Judge.

May 29, 1959.

31 IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois,
Eastern Division.

Times Film Corporation, a New
York Corporation,

Plaintiff,

vs.

The City of Chicago, a municipal
corporation, Richard J. Daley
and Timothy J. O'Connor,
Defendants.

No. 58 C 968.

NOTICE OF APPEAL.

Notice is hereby given that the above-named plaintiff, Times Film Corporation, a New York corporation, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the final judgment entered in this cause on May 29, 1959, and from the order dismissing this cause, which order of dismissal was also entered on May 29, 1959.

Furthermore, the Clerk of this Court is hereby directed to prepare the entire record, including exhibits and the Stipulation of Facts, in this cause for transmission to the

United States Court of Appeals for the Seventh Circuit,
pursuant to Rule 12(a) of the Rules of Practice of the
United States Court of Appeals for the Seventh Cir-
cuit and pursuant to Rule 75(o) of the Rules of Civil
Procedure for the United States District Courts.

Dated: June 26, 1959.

Abner J. Mikva,
Attorney for Plaintiff,
231 South La Salle Street,
Chicago 4, Illinois,
Andover 3-3700.

Attorney for Defendants-Appellees,
John C. Melaniphy,
Corporation Counsel,
City of Chicago,
511 City Hall,
Chicago 2, Illinois.

Notice of Appeal.

33. United States of America. } ss:
Northern District of Illinois. }

• • (Caption—58-C-968) • •

Certificate of Mailing.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that on June 26, 1959 in accordance with Rule 73(b) of the Federal Rules of Civil Procedure, a copy of the foregoing Notice of Appeal was mailed to:

John C. Melaniphy, Corporation Counsel,
City of Chicago,
511 City Hall,
Chicago 2, Illinois.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 26th day of June, 1959.

Roy H. Johnson,
Clerk.

By Gizella Butcher,
Deputy Clerk.

(Seal)

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City of Chicago
Department of Law
511 City Hall
Telephone RAndolph 6-8000

June 29, 1959

Roy H. Johnson
Clerk of the United States District Court
202 U. S. Court House
Chicago, Illinois

Re: Times Film Corporation vs. City of Chicago, et al., Case No. 58 C 968.

Dear Sir:

Pursuant to Rule 12(d) of the United States Court of Appeals for the Seventh Circuit, please be advised that

John C. Meianiphy
Corporation Counsel of the
City of Chicago
and

Sydney R. Drebin
Assistant Corporation Counsel
511 City Hall
Chicago 2, Illinois
Randolph 6-8000, Ext. 878

are the attorneys for the defendants-appellees in the above entitled cause.

Very truly yours,

Sydney R. Drebin,

*Assistant Corporation Counsel,
Head of Appeals and Review
Division.*

SRD:cl

cc: Abner J. Mikva,
Attorney for Plaintiff,
231 S. La Salle Street,
Chicago 4, Illinois.

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Stipulation re: Record.

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IN THE UNITED STATES DISTRICT COURT.

• • (Caption—58-C-968) • •

STIPULATION.

It is hereby agreed by and between the parties to the above entitled cause, by their respective attorneys, that pursuant to Rule 12(e) of the Rules of the United States Court of Appeals for the Seventh Circuit, the Clerk of the United States District Court, Northern District of Illinois, Eastern Division, is hereby directed to transmit the following original papers in this proceeding and no others:

1. Complaint, Summons and Security for Cost filed May 29, 1958.
2. Answer of defendants filed June 23, 1958.
3. Plaintiff's Motion for Summary Judgment and Affidavit attached thereto filed November 12, 1958.
4. Defendants' Motion for Summary Judgment and Affidavit attached thereto filed November 21, 1958.
5. Docket entry of January 6, 1959, as follows:
"Defendants' and plaintiff's motions for summary judgment are denied."
- 36 6. Stipulation of Facts filed March 6, 1959.
7. Final order entering judgment for defendants at plaintiff's costs signed May 29, 1959.
8. Plaintiff's Notice of Appeal and Cost Bond on Appeal filed June 26, 1959.

Times Film Corporation, a New York corporation,

Plaintiff,

By Abner J. Mikva,

Plaintiff's Attorney,

231 S. La Salle St.,
Chicago,
An 3-3700,

City of Chicago, a municipal corporation, Richard J. Daley, and Timothy J. O'Connor,

Defendants;

By John C. Melaniphy,
Corporation Counsel, City
of Chicago,
City Hall,
Chicago,
Attorney for Defendants.

37 United States of America, }
Northern District of Illinois. } ss:

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that the annexed and foregoing are the original papers constituting the record on appeal in the cause entitled: Times Film Corporation, a New York corporation, Plaintiff vs. The City of Chicago, a Municipal corporation, Richard J. Daley, and Timothy J. O'Connor, Defendants, No. 58 C 968, as follows:

Complaint filed May 29, 1958;

Summons with Marshal's return endorsed thereon and filed June 5, 1958;

Defendant's answer to complaint filed June 23, 1958;

Motion of plaintiff filed November 12, 1958;

Motion for summary judgment by defendants, filed November 21, 1958;

Order entered January 6, 1959, denying motions of plaintiff and defendants;

Stipulation of facts filed March 6, 1959;

Memorandum and order entered May 29, 1959;

Notice of Appeal of plaintiff filed June 26, 1959;

Clerk's Certificate.

Certificate of mailing attached thereto;

- 38 Information pursuant to Rule 12(d) of the United States Court of Appeals, for the Seventh Circuit, filed June 30, 1959;

Stipulation pursuant to Rule 12(e) of the United States Court of Appeals, for the Seventh Circuit, filed July 9, 1959;

filed and entered among the records of the said Court in my office on the dates indicated.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 16th day of July, 1959.

Roy H. Johnson,
Clerk,

By Gizella Butcher,
Deputy Clerk.

(Seal)

[fol. 37]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 12717 September Term, 1959

September Session, 1959

TIMES FILM CORPORATION, a New York corporation,
Plaintiff-Appellant,

v.

THE CITY OF CHICAGO, a municipal corporation, RICHARD
J. DALEY, its mayor, and TIMOTHY J. O'CONNOR, its
police commissioner, Defendants-Appellees.

Appeal from the United States District Court of the
Northern District of Illinois, Eastern Division.

OPINION—November 27, 1959

Before Hastings, Chief Judge, and Schnackenberg and
Knoch, Circuit Judges.

SCHNACKENBERG, Circuit Judge. From a judgment for
defendants, The City of Chicago, a municipal corporation,
Richard J. Daley, its mayor, and Timothy J. O'Connor,
its police commissioner, dismissing the plaintiff's cause,
the latter has appealed.

By its complaint, plaintiff sought an order from the
district court commanding defendants to forthwith issue
to plaintiff the permit required by the city's ordinance,
known as §§ 155-1 to 155-7 of the Municipal Code of the
City of Chicago, alleging that it applied to O'Connor for
a permit to exhibit a motion picture film entitled "Don
Juan", but that he did not issue the permit on the ground
[fol. 38] that such a permit shall be granted only after such
film had been produced at his office for examination; that an

appeal to defendant Daley proved unsuccessful, and that, without a permit, plaintiff is prohibited from exhibiting said film under penalty of arrest and criminal prosecution, all in denial of plaintiff's rights under the first and fourteenth amendments to the constitution of the United States.

The defendants having answered the complaint, and the facts having been stipulated, the court entered the judgment from which the appeal was taken.

§ 155-1 of the ordinance provides:

"It shall be unlawful for any person to show or exhibit in a public place, or in a place where the public is admitted, anywhere in the city any picture . . . without first having secured a permit therefor from the commissioner of police.

"Any person exhibiting any picture or series of pictures without a permit having been obtained therefor shall be fined not less than fifty dollars nor more than one hundred dollars for each offense. . . ."

§ 155-4 of said ordinance reads:

"If a picture or series of pictures, for the showing or exhibition of which an application for a permit is made, is immoral or obscene, or portrays depravity, criminality, or lack of virtue of a class of citizens of any race, color, creed, or religion and exposes them to contempt, derision, or obloquy, or tends to produce a breach of the peace or riots, or purports to represent any hanging, lynching, or burning of a human being, it shall be the duty of the commissioner of police to refuse such permit; otherwise it shall be his duty to grant such permit.

In its complaint, plaintiff has limited its statement of the facts in an obvious attempt to so frame its case that the United States Supreme Court will be persuaded to rule upon the question of constitutionality of motion picture censorship, a course from which, according to Mr. Justice Harlan, *Kingsley Picture Corp. v. Regents of U:*

[fol. 39] of *N.Y.*, 360 U.S. 684, 708; the Court has carefully abstained. In plaintiff's paring down of the facts, however, it has reduced the case to an abstract question of law. It is fundamental that, while the courts will adjudicate controversies, they will not announce opinions where concrete issues in actual cases, are not set forth. In *United Public Workers v. Mitchell*, 330 U.S. 75, 89, the court said:

"As is well known, the federal courts established pursuant to Article III of the Constitution do not render advisory opinions. For adjudication of constitutional issues, 'concrete legal issues, presented in actual cases, not abstractions,' are requisite. * * *"

The subject matter involved in this case is, according to the complaint, a moving picture film, which is described in no way except as "Don Juan". The nature of its contents, either generally or specifically, is not revealed by the complaint and is not alleged to have been made known to defendants. The film itself was not tendered to the district court or this court and is not in the record. No one, except those in privity with plaintiff, knows whether the film *Don Juan*, for which the protection, first of this court, and eventually of the United States Supreme Court, is sought, is a picture of (for instance) a happy Sunday School picnic, a bullfight, or any one of the following (*inter alia*): (a) an immoral or obscene act; (b) exposure of the citizens of any race, color, creed or religion to contempt, derision or obloquy by attributing to them depravity, criminality or lack of virtue; (c) acts tending to produce a breach of the peace or riots; or (d) a hanging, lynching, or burning of a human being. With the physical object constituting the subject matter of this complaint hidden from the court, we are left to guess as to what our holding is to apply. If we grant the relief prayed, we will be sanctioning the public exhibition of we know not what. It might be a portrayal of a school of crime, which, for instance, teaches the steps to be taken in successfully carrying out an assassination of a president of the United States as he leaves the White House; or shows how to arrange an uprising of subversive groups in one of our cities.

[fol. 40] Although plaintiff, evidently for strategic purposes, refuses to take a stand which will reveal the contents of the film, certain argument in its brief point strongly to the fact that the film is one subject to a charge of obscenity. Most of the cases cited by it involve that charge. Specifically, plaintiff refers to *Times Film Corp. v. City of Chicago*, 244 F.2d 432, where we considered a film charged to be obscene. The brief of counsel for the plaintiff in the case at bar quotes at great length from the report of a master in chancery in that case, only a small part of which we set forth below:

"At least it cannot be concluded that, for the purposes of limiting the basic constitutional protection to freedom of expression, arousal of sexual desires in normal persons is in the same category as danger to the nation at war, or incitements to riots and acts of violence, or to the overthrow by force of orderly government, or even with expressions which have the effects of force."

The same ordinance is involved in both that case and this. We may fairly infer that, in plaintiff's opinion, obscenity is in the same category, for present purposes, with incitement to riots.

We recognize that there may be differences of opinion as to whether a film, if it tends to produce a breach of the peace or riots, is entitled to be shown in a theater repeatedly as long as the theater manager is willing to post appearance bonds following repeated arrests for violation of the criminal sections of the ordinance, or whether such a showing of the film should await its approval by a censorship board. But those differences should be resolved by a court having possession of the full facts, none of which is more relevant than the film itself. We would not emulate the play of Hamlet without Hamlet. Without the film before the court, we are presented with a hypothetical case in which even the hypothesis is incomplete. We are being asked to adjudicate an abstract question of law, based upon an incomplete skeleton of facts. Without knowledge of the film's contents, the district court and we are not in a position to determine whether plain-

tiff has a right to exhibit its film without city censorship.

In *Longshoremen's Union v. Boyd*, 347 U.S. 222, the court said, at 224:

[fol. 41] " * * * That is not a lawsuit to enforce a right; it is an endeavor to obtain a court's assurance that a statute does not govern hypothetical situations that may or may not make the challenged statute applicable. Determination of the scope and constitutionality of legislation in advance of its immediate adverse effect in the context of a concrete case involves too remote and abstract an inquiry for the proper exercise of the judicial function. *United Public Workers v. Mitchell*, 330 U.S. 75; see *Muskraat v. United States*, 219 U.S. 346, and *Alabama State Federation of Labor v. McAdory*, 325 U.S. 450. Since we do not have on the record before us a controversy appropriate for adjudication, the judgment of the District Court must be vacated, with directions to dismiss the complaint."

Plaintiff makes clear its contention that "the city's power is limited to punishment after the fact, just as it is in other areas of criminal law." If that contention is correct, thus barring censorship before a film is exhibited in public theaters, actual prior restraint will scarcely exist as to the exhibition of a film in theaters. While it is common knowledge that the responsible owners of newspapers and television broadcasting systems respectively exercise a wholesome, voluntary censorship over newspapers and television, no similar regulation of the exhibition of moving picture films in theaters is as effectively exercised by private industry. The arrest and prosecution of employees of theaters who exhibit films charged with obscenity, inciting to riot, and the other proscriptions mentioned in the ordinance under consideration, is at most a theoretical remedy of prevention. It would be practically ineffectual, especially in this case. Plaintiff, owner of the film, is a New York corporation, having its place of business in New York City. It does not appear that it has any headquarters in Illinois. A criminal prosecution against the operator of the projector showing the film in a theater in Chicago, or against

some other employee of the theater, would be practically doomed to failure as a means of *stopping* the showing of the film. Even if such a prosecution finally culminated in a conviction, in the meantime the damage caused by the showing of the film would have been done. A film which [fol. 42] incites a riot produces that result almost immediately after it is shown publicly. Likewise, the effect upon the prurient mind of an obscene film may result harmfully to some third person within hours after the film has been shown. These are disadvantages of the doctrine of limiting the power of the city to punishment after the fact, for which plaintiff contends.

We have briefly referred to some of the considerations which bear upon the abstract question presented by plaintiff. The film not being before the court, no hypotheses will be assumed to apply to its contents. For the reasons hereinbefore set forth, the judgment of the district court is affirmed.

Judgment Affirmed.

[fol. 43]

IN UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 12717

TIMES FILM CORPORATION, a New York corporation,
Plaintiff-Appellant,

vs.

THE CITY OF CHICAGO, a municipal corporation, **RICHARD J. DALEY**, its mayor, and **TIMOTHY J. O'CONNOR**, its police commissioner, **Defendants-Appellees.**

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Before Hon. John S. Hastings, Chief Judge, Hon. Elmer J. Schnackenberg, Circuit Judge, Hon. Win G. Knoch, Circuit Judge.

JUDGMENT—November 27, 1959

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Affirmed, with costs, in accordance with the opinion of this Court filed this day.

[fol. 44] Clerk's certificate to foregoing transcript (omitted in printing).

[fol. 45]

SUPREME COURT OF THE UNITED STATES

No. 689, October Term, 1959

TIMES FILM CORPORATION, Petitioner,

vs.

CITY OF CHICAGO et al.

ORDER ALLOWING CERTIORARI—March 21, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.